only be either to the debtor pledging it, after paying the debt, or else to some one who purchased it of the bank, either with the security for which it was pledged or for the purpose of paying the debt to the bank. The most natural construction of such a transaction upon its face, undoubtedly was that the endorsement was made to restore the title to the debtor, since that is the more common mode of transferring collaterals by banks, and the only one which would come fairly within the ordinary employment of the cashier. The disposing of collaterals in any other mode would seem to require the action of the directors. The paper, therefore, imported on its face to be a re-assignment of the certificate to the debtor, upon payment of the debt to the cashier. And who would the plaintiff naturally suppose the debtor to be? Why naturally the man who desired to pledge the same collateral for another loan. We therefore insist there was nothing in this whole transaction, as understood by the plaintiff at the time he accepted this certificate or collateral, calculated to mislead him, except his confidence in the careful business habits of the defendants, and that is nothing for which they are responsible to any one but themselves. But the case will, we hope, be carried to the Supreme Court, where the decision will settle the law in such a manner as to put these questions at rest. I. F. R.

United States District Court, Western District of Missouri. In Bankruptcy.

IN RE DETERT.

Where a deed of trust of a homestead is set aside on the ground of being a preference, the homestead rights of the fraudulent grantor are restored, and the same result will follow where the preference is surrendered under the 23d section of the bankrupt law.

Where a creditor who has received a conveyance which is fraudulent on the ground of being a preference, files a consent that all the creditors may share in the property thus conveyed, such consent operates as a surrender of his preference.

THE bankrupt filed his petition, praying to have $1500 set apart to him out of the assets of the estate in lieu of a homestead. It appeared from the evidence that the bankrupt was indebted to Comstock & Co., who sued him and recovered judgment, to delay the collection whereof he conveyed and assigned his property, including his homestead, to Charles F. Meyer, in trust for himself and certain other creditors named in the deed; that within four months after the making of this conveyance he was declared bankrupt on a creditor's petition; that said Meyer and H. B. Hamilton were elected assignees; that Meyer presented his own as well as the creditor's claims named in the trust-deed for allowance as secured; that thereupon Hamilton, his co-assignee, objected, alleging that an illegal preference was attempted thereby to be secured,

and that the trust-deed was on that account void; that said Meyer, to avoid the objections, executed an instrument in writing, agreeing that if the objections were withdrawn and the claim allowed to be proven up as secured, the proceeds derived from the disposition of the property should be equally distributed among all the creditors of the estate; that the objections were withdrawn and the claims allowed as secured; that a sale was ordered by the court under the deed of trust in conformity to its requirements, in which the assignees joined; and that the proceeds of sale were paid into the estate and treated as part of the general fund now in court.

Johnson & Botsford, for the homestead.

H. B. Hamilton, contrà.

KREKEL, D. J.—The deed of trust made by the bankrupt to Meyer has never been set aside, but the bankrupt contends that the surrender of the preference by Meyer, as stated under the 23d section of the bankrupt law, has the same effect as the setting aside of the deed would have, and that consequently he is entitled to an allowance to the extent at least of what the homestead sold for. That a preference was intended to be secured by the trust-deed to Meyer is not seriously questioned; but the assignee contends that, as the claim was allowed as secured, and the deed of trust held valid, as shown by the sale under it, the proceeds must be treated, so far as the bankrupt is concerned, as discharged from all claim on his part.

It has often been decided, and may be said to be settled law, that where a party makes a conveyance which is afterwards set aside on account of an illegal preference under the bankrupt law, both the right to a homestead and dower revive: *Cox* v. *Wilder*, 2 Dill. C. C. 45; *Vogler* v. *Montgomery*, 13 Amer. Law Reg. N. S. 244; *McFarland* v. *Goodman*, 13 Amer. Law Reg. 697.

The reasons given are that the relinquishment of homestead or dower are for the benefit of the grantee alone; and he having been unable to avail himself of it, the same cannot go to the assignee who claims adversely to the deed. Were it not for the deed being in force, as it is claimed, the case, under the rulings cited, would present no difficulty. The 23d section of the bankrupt law provides that any person having received a preference, shall not prove the claim on account of which the preference was given, nor shall he receive any dividend therefrom until he shall first have surrendered to the assignee all property, money or benefit. The

manner in which this surrender shall be made the law has not determined. In the case before the court, Meyer was not permitted to prove his claim or have any benefit therefrom until, by an instrument in writing, he had agreed that the proceeds of his preference should become a part of the general estate of the bankrupt. This may be treated in effect as a surrender under the 23d section, and is not a mere consent on the part of Meyer for the unsecured creditors to participate in the proceeds of his preference. But the question remains: What effect had this surrender on the rights of the bankrupt? If the reasons given by the authorities cited that the conveyance was for the benefit of the grantee and could not operate in favor of the assignee or general creditors, both of whom claimed adversely to the deed, be sound, then it must follow that the same effect must be given to this relinquishment of Meyer as the setting aside of the deed had it taken place, would have had. I am the more inclined to give this effect to the relinquishment under consideration from the persuasive force of the Missouri case cited, and because of the harmony thus established between the Federal and state decisions, furnishing a permanent rule of property.

The homestead having been sold at the trustee's and assignee's sale for $725, this amount will be set apart to the bankrupt in lieu of his homestead.

While there is nothing in the law restraining or limiting the voluntary alienation of a homestead, it is well settled that a conveyance thereof operates as an estoppel only in favor of the grantee in the deed. The question as to how that estoppel is overcome has recently been considered in several cases. In *Cox* v. *Wilder*, 2 Dill. C. C. 45, the grantor was declared bankrupt; a conveyance was set aside at the instance of his assignee on the ground of fraud, and the court held that his homestead right was restored. The case of *McFarland* v. *Goodman*, 13 Amer. Law Reg. 697, and that of *In re Poleman*, 19 Int. Rev. Rec. 94, are of similar purport. In the case of *Vogler* v. *Montgomery*, 13 Amer. Law Reg. 244, it was held that the sale of a homestead without removing therefrom did not constitute an abandonment, and that the homestead right revested upon receiving back a deed to the property. The above-reported case goes one step further and establishes the applicability of the principle to a case where the deed is not set aside or title revested in the grantor or his assignee, but where a deed of trust is held valid and a sale is made under it by the trustee and assignee jointly, and the preferred creditor only consents that all the creditors shall share in the proceeds of the sale. Here the proceeds of the sale under the fraudulent deed of trust were set aside to the bankrupt in lieu of his homestead. This would, at first view, seem to be going very far to restore to a party what he had voluntarily relinquished, but when the substance, and not the mere form of the transaction is regarded, the correctness of the judgment is apparent

H. B. JOHNSON.